

National Type Evaluation Program (NTEP) Committee Interim Agenda

Don L. Onwiler, Chairman
Program Manager
Nebraska Department of Weights & Measures

500 INTRODUCTION

The NTEP Committee will address the following items at its 2007 Interim Meeting. Except when posted, all meetings are open to the membership. The members will be invited to dialogue with the NTEP Committee on issues that the NTEP Committee has on its agenda. The NTEP Committee is currently working on the following issues:

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*Drafts of the sector summaries can be viewed at - <http://www.ncwm.net/ntep/index.cfm?fuseaction=news>

Table C
Glossary of Acronyms*

BIML	Bureau of International Legal Metrology	IR	International Recommendation
CD	Committee Draft ¹	MAA	Mutual Acceptance Arrangement
CIML	International Committee of Legal Metrology	OIML	International Organization of Legal Metrology
CPR	Committee on Participation Review	PTB	Physikalisch-Technischen Bundesanstalt
DD	Draft Document ²	R	Recommendation
DR	Draft Recommendation ²	SC	Subcommittee
DV	Draft Vocabulary ²	TC	Technical Committee
DoMC	Declarations of Mutual Confidence	WD	Working Document ³
<p>¹ CD: a draft at the stage of development within a technical committee or subcommittee; in this document, successive drafts are numbered 1 CD, 2 CD, etc.</p> <p>² DD and DR: draft documents approved at the level of the technical committee or subcommittee concerned and sent to BIML for approval by CIML.</p> <p>³ WD: precedes the development of a CD; in this document, successive drafts are number 1 WD, 2 WD, etc.</p> <p>* Explanation of acronyms provided by OIML.</p>			

**Details of All Items
(In Order by Reference Key Number)**

1. Test Data Exchange Agreements

Background/Discussion: This item was included on the Committee's agenda in 1998 to provide an update on NTEP's work to establish bilateral and multilateral agreements. Under such agreements and arrangements, manufacturers would be able to submit their equipment to any of the participating countries for testing to OIML-recommended requirements. The resulting test data would be accepted by other participants as a basis for issuing each country's own type approval certificate. Following is a report on the three types of test data exchange agreements:

Mutual Acceptance Arrangement (MAA):

The MAA is also in the NCWM Board of Directors Committee Report.

Background: During the 2006 NCWM Interim Meeting, the full NCWM Board carefully considered this issue and the recommendation of the NTEP Committee. Significant discussion was held on this issue with the primary focus on the desire to become a utilizing member (Country B) for the DoMC that will cover OIML R 60 load cells. Significant comments also came from the full membership during the 2006 NCWM Interim Meeting open hearings on this issue. In addition, a very large group attended a late evening meeting on this topic. The participants in this meeting asked many important questions and demonstrated a high level of interest in NCWM's direction regarding MAAs. The NTEP Committee would like to acknowledge and thank this group of participants for their significant contributions in discussing this issue.

The decision of the Board was to accept the recommendation of the NTEP Committee and indicate the intention of signing on as a utilizing member of the DoMC for OIML R 60 Load Cells. The NCWM Board indicated no interest at this time in being a utilizing participant for OIML R 76 "Non-automatic weighing instruments (NAWI)." The intent is to investigate various alternatives and determine if a laboratory can be established that will allow NCWM to be an issuing participant in the DoMC for OIML R 76. It was clearly stated that this laboratory would have to be "viable" and that NCWM must fully understand the effect such a signing may have on NTEP, existing NTEP labs, and our standards development process in NCWM. It was also stated that it is not clear at this time if funding for such a laboratory is available.

The DoMC for OIML R 60 was signed by NCWM Chairman Don Onwiler at the 2006 NCWM Annual Meeting.

Current Comment: OIML met in October 2006 and approved the MAA for R 60 and R 76. NCWM and NTEP look forward to the opportunity to work with our international partners in the DoMC for OIM R 60.

Bilateral Agreements: No additional discussions have been held on this topic, pending the outcome of the MAA discussions.

NTEP-Canada Mutual Recognition Program: No additional areas of MRA activities have been identified.

2. NTEP Participating Laboratories and Evaluations Reports

At the 2006 NCWM Annual meeting, Stephen Patoray, NTEP Director, updated the Committee on NTEP laboratory and administrative activities since October 1, 2005.

The NTEP weighing and measuring laboratories held a joint meeting in April 2006 in Annapolis, Maryland. The NTEP weighing laboratories also met in September 2006 before the meeting of the Weighing Sector in Annapolis. The NTEP measuring laboratories also met in October 2006 prior to the Measuring Sector meeting in Annapolis.

During the 2006 NCWM Annual Meeting, the NTEP Director, Steve Patoray, reported that the number of authorized NTEP labs has not changed within the last year. He also indicated that the NTEP Committee and he are watching the

backlog at the NTEP laboratories closely. At the present time, the backlog at the NTEP laboratories continues at near historical levels, after a period of several months at a much higher level.

Current Comment: Steve Patoray will update the Committee on any outstanding issues related to the NTEP participating labs.

Upcoming meetings:

NTEP Laboratory Meeting – May 2007, Sacramento, California
Software Sector – (TENTATIVE DATE) May 2007, Sacramento, California
Grain Analyzer Sector – August 2007, Kansas City, Missouri
Weighing Sector – September 2007, Sacramento, California
Measuring Sector – October 2007, Little Rock, Arkansas

3. NTETC Sector Reports

Background:

Grain Moisture Meter and NIR Protein Analyzer Sectors: The NTETC Grain Moisture Meter and NIR Protein Analyzer Sectors held a joint meeting in Kansas City, Missouri, on August 23 – 24, 2006. A draft of the final summary will be provided to the Committee for review and approval prior to the 2007 NCWM Interim Meeting.

The next meeting of the Grain Moisture Meter and NIR Protein Analyzer Sectors is scheduled for August 2007 in Kansas City, Missouri. For questions on the current status of Sector work or to propose items for a future meeting, please contact the sector technical advisors:

Diane Lee
NIST WMD
100 Bureau Drive – Stop 2600
Gaithersburg, MD 20899-2600
Phone: (301) 975-4405
Fax: (301) 975-8091
e-mail: diane.lee@nist.gov

Jack Barber
J.B. Associates
10349 Old Indian Trail
Glenarm, IL 62536
Phone: (217) 483-4232
e-mail: jbarber@motion.net

Measuring Sector: The NTETC Measuring Sector met October 20 - 21, 2006, in Annapolis, Maryland. A draft of the final summary will be provided to the NTEP Committee for review and approval prior to the 2007 NCWM Interim Meeting.

The next meeting of the Measuring Sector is scheduled for October 2007 in Little Rock, Arkansas, in conjunction with the Southern Weights and Measures Association's Annual Meeting. For questions on the current status of sector work or to propose items for a future meeting, please contact the sector technical advisor:

Richard Suiter
NIST WMD
100 Bureau Drive – Stop 2600
Gaithersburg, MD 20899-2600

Phone: (301) 975-4406
Fax: (301) 975-8091
e-mail: rsuiter@nist.gov

Weighing Sector: The NTETC Weighing Sector met September 26 - 28, 2006, in Annapolis, Maryland. A final draft of the meeting summary will be provided to the NTEP Committee for review and approval prior to the 2007 NCWM Interim Meeting.

The next Weighing Sector meeting is scheduled for September 2007 in Sacramento, California. For questions regarding the current status of sector work or to propose items for a future meeting, please contact the sector technical advisor:

Steven Cook
NIST WMD
100 Bureau Drive – Stop 2600
Gaithersburg, MD 20899-2600

Phone: (301) 975-4003
Fax: (301) 975-8091
e-mail: stevenc@nist.gov

Steve Patoray reported that the previous year's sector reports could be found on the NCWM website. He also reported that, if contacted, he can supply anyone interested with all previous sector reports.

Current Comment: The Committee will hear an update on the activities of the National Type Evaluation Technical Committee (NTETC) Sectors at the 2007 NCWM Interim Meeting.

4. NTEP Participation in U.S. National Work Group on Harmonization of NIST Handbook 44, NCWM Publication 14 and OIML R 76 and R 60

Background: The Secretariat for OIML TC 9/SC 1 recently submitted the 2 CD of OIML R 76-1 “Non-automatic Weighing Instruments” to the participating members of TC 9/SC 1 for review, comment, and vote. The 2 CD was developed based on an analysis of the 1992 edition OIML R 76, answers from OIML TC 9/SC 1 members to a questionnaire distributed in May 2002, and comments on the December 2003 WD for R 76. The 2 CD includes the changes to the December 2003 WD and the December 2004 1 CD based upon comments and recommendations of the U.S. National Work Group (USNWG) and other countries on R 76.

The United States submitted 27 recommendations and requests for clarifications to the secretariat of TC 9/SC 1 on the 1 CD and opposed the 1 CD being elevated to a Draft Recommendation. Eighteen of the U.S. recommendations and requests for clarification were accepted by the secretariat, four recommendations resulted in alternate language proposed by the secretariat, and five recommendations were not accepted by the secretariat. The Secretariat provided the United States with a reason why the remaining comments were not accepted.

The secretariat has already registered the 2 CD of R 76-1 as a DR in order not to prolong the revision process at the technical committee level provided that the 2 CD receives approval.

NIST WMD asked the USNWG for R 76 and other interested individuals, organizations, and associations to review the 2 CD and submit any comments, along with recommended language and technical justifications to NIST WMD. During the 2006 NCWM Interim Meeting, Steven Cook, NIST WMD, provided the committee with an update to the revision of R 76 and indicated that the United States will vote in favor of the 2 CD.

Although this current review of R 76 will likely be completed shortly, OIML has indicated a willingness to revisit the Recommendation and to consider including a large-capacity class similar to the current Handbook 44 Class IIIL and the Canadian Class III HD at some point in the future. WMD will be working with its Canadian counterparts to develop a North American Heavy-Duty Device Class.

Current Comment: At its October 2006 meeting in Cape Town, South Africa, the 41st CIML approved DR 7: R 76-1 Non-automatic weighing instruments, Part 1: Metrological and technical requirements – Tests. The DoMC for R 76 will need to be updated to reflect the changes included in the new revision of R 76. Further updates on the current status of this project will be provided by Steve Cook.

5. Software Sector

Background: The first meeting of the Software Sector was April 5, 6, and 7, 2006, in Annapolis, Maryland.

At this time the recommended scope of the Software Sector is to:

- Develop a clear understanding of the use of software in today's weighing and measuring instruments.

- Develop NIST Handbook 44 specifications and requirements, as needed, for software incorporated into weighing and measuring devices. This may include tools for field verification, security requirements, identification, etc.
- Develop NCWM Publication 14 checklist criteria, as needed, for the evaluation of software incorporated into weighing and measuring devices, including marking, security, metrologically significant functions, etc.
- Assist in the development of training guidelines for weights and measures officials in verifying software as compliant to applicable requirements and traceable to an NTEP Certificate. Educational material for manufacturers, designers, service technicians, and end users may also be considered.

SOFTWARE SECTOR

Meeting Summary Annapolis, Maryland April 5, 6, and 7, 2006

Note: Underlined "D-SW" sections refer to International Document (OIML D-SW) "General Requirements for Software Controlled Measuring Instruments."

Action items:

1. Software identification (model/version, help screen, etc.)
 - a. Built for Purpose
 - b. Not Built for Purpose
 - c. Version number or greater
2. Software protection/security D-SW 5.1.3
 - a. Identification of unapproved/unauthorized software
3. Storage of data, D-SW5.2.3 and subsections, automatic storing and transmission
4. Software maintenance and reconfiguration D-SW5.2.6
5. D-SW Section 7. verification in the field—needs work
6. Mfg. documentation to be submitted, change to the NTEP application D-SW 6.1.1
7. Definitions of Software-based Device, etc.

The group agreed that Jim Truex should continue on as Software Sector chairman. Mr. Truex asked Steve Patoray to continue on as technical advisor to the Software Sector. It was requested that NIST consider the role of technical advisor in the future as they currently do with other sectors.

Current Comment: The Software Sector met for a second time on October 18 - 19, 2006, in Annapolis, Maryland. Much discussion was held on the above action items. It was clear that additional work is needed to find consensus on these various items. Additional meetings are needed to complete the work of this Sector. There will be a request to the NCWM Board for additional funding for future meetings.

6. Conformity Assessment Program

Background: At the fall 2006 NTEP Committee Meeting, the Committee discussed the current status of this project. The following items were noted:

Certificate Review: The question is how this would be accomplished given the limited resources of NCWM. It was suggested that this item may need to continue on a "back burner" until resources can be clearly identified before proceeding with the project in an efficient, thorough, and accurate manner.

Initial Verification: This part of the project is moving forward. The work group chairman, Lou Straub, has received data from several states on small capacity price computing scales. The work group is currently finalizing a checklist for retail motor-fuel dispensers and vehicle scales.

Verified Conformity Assessment Program (VCAP): The work group chairman provided the NCWM Board with a final version of the work group report at the 2006 NCWM Annual Meeting. This report will form the basis of the technical policy. Additional work will be needed. At the 2006 NCWM Fall Board Meeting, additional discussion was held on this item, and a small work group will be formed to define the remaining elements of this program.

Current Comment: Steve Patoray will update the NTEP Committee and the NCWM Board regarding the current status of this item.

7. NTEP Certification of Residential Type Water and Vapor Meters

Background: A request came in from one state for NTEP to conduct evaluations and certify residential-type water meters and vapor meters. The main usage of such a device is in sub-metering. A discussion was held on this item at the Measuring Sector meeting in October 2006. There was insufficient representation from the manufacturers of this type of device to come to consensus on this item; however, two work groups were formed consisting of interested parties regarding these device types. The sector chairman, Mike Keilty, will draft a letter to be sent to device manufacturers of this device type with a request for comments, recommendations, and additional information on sub-metering standards and policies from other agencies and municipalities.

Current Comment: Steve Patoray and Dick Suiter will update the NTEP Committee on any additional progress on this item. Any additional comments from NCWM members would be appreciated.

New Item

8. Use of NTEP Logo

Background: The NTEP logo is a registered trademark of NCWM. NCWM Publication 14 Administrative Policy provides some parameters on the appropriate use of the logo. Over the past several months, NTEP has been attempting to resolve an issue of misuse of the NTEP logo. During this time, the NTEP Committee and the NCWM Board have discussed developing a systematic method of addressing misuse of the NTEP logo in the future. A work group was formed during the 2006 Annual Meeting with the charge to develop draft form letters that could be used by NTEP to inform anyone believed to be misusing the NTEP logo. Additionally, NCWM staff was directed by the Board to obtain advice from legal counsel as to the appropriate methods of deterring misuse of the logo. Legal counsel recommended that a license agreement be implemented between NCWM and anyone wishing to use the NTEP logo. This agreement would provide allowances and limitations on the use of the logo. The license agreement, along with form letters drawn up by legal counsel, was submitted to the NCWM Board for discussion. The Board has recognized that this change in policy relating to the use of the NTEP logo is significant. Therefore, the NTEP Committee is presenting the proposed license agreement for review and requesting comments from NCWM membership during the 2007 Interim Meeting. A DRAFT copy of the license agreement can be found in Appendix A.

Don Onwiler, Nebraska, NTEP Committee Chair

Mike Cleary, California, NCWM Chair
Judy Cardin, Wisconsin, NCWM Chair-Elect
Charles Carroll, Massachusetts
Randy Jennings, Tennessee

NTEP Technical Advisor: S. Cook, WMD
NTEP Technical Advisor: S. Patoray, NTEP Director

National Type Evaluation Program Committee

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Appendix A

NTEP Certification Mark License

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PFAU ENGLUND
NONPROFIT LAW, P.C.

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ADMITTED IN VA AND DC

EMAIL MEMORANDUM

TO: Stephen Patoray, NCWM
FROM: Sandra Pfau Englund
RE: Recommended revisions to NTEP policies
DATE: August 24, 2006

You asked that I review and provide recommendations on how to strengthen compliance with NCWM's administrative policies regarding use of the NTEP certification mark. Following are my recommendations for revisions to the NCWM administrative policies. I previously provided and recommended NCWM use a certification license to regulate use of the mark. Attached are draft letters that may be used to transmit and request execution of the recommended certification mark license.

Let me know if you have questions or if I can assist further with this matter.

Recommended modifications to NCWM Administrative Policies

- A. Section N.5 Withdrawn Status -- add to the *Reasons for Withdraw*
 - (4) Use of the NTEP certification mark without a license from NCWM;
 - (5) Misuse of the NTEP certification mark.
- B. Section N.7 Reactivation of Certificates of Conformance – revise paragraph “a” to state,
 - a. An application for reactivation.... This will require an application, processing fee and evidence that the applicant is in full compliance with all NCWM administrative policies.
- C. Section U.2 Permissible Use of Statements and NTEP Logo – revise paragraph “b” to state,
 - b. The NTEP statement or logo shall only be used by person(s) or organization(s) that have been granted a license by NCWM to use the statements and logo. All holders of Certificates of Conformance and companies that distribute goods that include certified devices may apply for a license. The license is provided without fee or royalty. All licensees must use the statements and logo only in conjunction with products that have been certified in accordance with this publication and NIST Handbook 44. The statement or logo shall never be used in any manner that could suggest or imply that certification extends to a product that is not NTEP certified.

When reference is made to the NTEP logo or an NTEP CC; it is essential to clearly identify which products are NTEP certified if a copy also includes products that are not certified. References to NTEP must always be located in close proximity to any references to a certified product when non-certified products are shown on the same page.

NCWM, in its sole discretion, determines whether its certified mark and statements are properly used in conformance with the license agreement and these policies.

- D. Section T. Appeal and Review Process – revise the first bullet under T.1 by deleting the initial phrase, “At any stage in the evaluation process”. Add a fourth bullet that states, “A licensee may appeal withdrawal of the NTEP Certification Mark License Agreement”

Revise the last sentence of section T.2 (e) to state,

“A copy of the Director’s decision shall be delivered or mailed to the appellant, the Committee Chair, and (if appropriate) the laboratory.”

**National Conference on Weights and Measures (NCWM)
NTEP Certification Mark License Agreement**

This License Agreement (“License”) is entered into by and between the National Conference on Weights and Measures, Inc., a Virginia nonprofit, tax-exempt corporation with its principal office located at 15245 Shady Grove Road, Suite 130, Rockville, Maryland 20850 (known in this License as “NCWM”), and

Company name: _____
Company address: _____
Contact name: _____ Contact phone: _____
Contact email: _____
known in this License as the “Licensee”.

Background

The NTEP (National Type Evaluation Program) name and logo (the “Certification Mark”) is a Certification Mark registered with the United States Patent and Trademark Office and owned by the National Conference on Weights and Measures (“NCWM”). As the owner of the Certification Mark, NCWM has the exclusive right to authorize the parties that may use the Certification Mark and how the Certification Mark may be used. NCWM also is required to prevent the misuse of the Certification Mark.

Generally NCWM authorizes holders of Certificates of Conformance, and third party purchasers of certified devices, to use the Certification Mark provided such parties enter into a Certification Mark licensing agreement with NCWM and agree to use the Certification Mark in conformance with NCWM’s policies.

WHEREAS, NCWM is the owner of the trademark shown in Exhibit A and referred to as the “Certification Mark” in this agreement, which Certification Mark is registered with the United States Patent and Trademark Office (Registration No. 2397670) and is used to certify that an apparatus has been found through the National Type Evaluation Program to conform to the design requirements and be capable of meeting the performance requirements for goods of the particular type as set forth in *Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, of the National Institute of Standards and Technology; and,

WHEREAS, Licensee desires to obtain a license to use the Certification Mark with respect to the distribution or sale of a certified device;

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. **License grant.** Provided Licensee complies with all the terms, conditions and policies relating to the use of the Certification Mark, NCWM grants Licensee a limited, non-exclusive, world-wide, revocable, non-transferable royalty-free license to use the Certification Mark on or in connection with a certified device.

2. **Reservation of rights.** Except for the limited license rights granted in this agreement, NCWM reserves to itself all right, title and interest in and to the Certification Mark.
3. **License requirements and limitations.** The license granted in section 1 is granted subject to the following requirements and limitations:
 - a. **Compliance with the NCWM National Type Evaluation Program Administrative Policy, Publication 14 (“Publication 14”).** Licensee shall comply with all requirements in Publication 14, as currently existing or later revised. Licensee is solely responsible for keeping itself informed of the current requirements in Publication 14 by reviewing from time to time the version posted on the NCWM website. NCWM is under no obligation to inform Licensee of changes to Publication 14 other than by posting the revised version on its website. If Licensee does not agree with any changes to Publication 14, Licensee’s sole remedy is to terminate this Agreement as provided herein. If the provisions of Publication 14 and this License conflict, the terms of this License shall control.
 - b. **Certification Mark used with certified devices only.** Licensee shall only use the Certification Mark in conjunction with devices that have been certified in accordance with Publication 14 and NIST Handbook 44, and that hold an active NTEP Certificate of Conformance. It is essential that when a device is included as part of a product that it be clear that only the device, and not the entire product, is certified. When a certified product is shown on the same page with a non-certified product, the Certification Mark must be located in close proximity to the certified product. Licensee understands and agrees that NCWM shall determine, in its sole discretion, if use of the Certification Mark is inappropriate or unclear, and Licensee agrees to revise the use or placement of the Certification Mark, or remove the Certification Mark, as directed by NCWM.
 - c. **Advertising Statements.** Licensee understands and agrees that all statements used in conjunction with the Certification Mark must comply with Appendix C of Publication 14. Licensee understands and agrees that NCWM shall determine, in its sole discretion, if the statements used comply with NCWM’s policies, and Licensee agrees to revise or remove statements that NCWM determines do not comply with its policy.
 - d. **Certification Mark may not be modified.** Licensee shall not modify, enhance or change the Certification Mark or combine it with another mark, or use, adopt or register any marks confusingly similar to the Certification Mark.
 - e. **Certification Mark may not be used:** (i) in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Certification Mark; (ii) in any manner as would violate the rights of any third parties; (iii) in any manner as would result in any third party claim or any governmental investigation, claim or proceeding alleging unlawful or improper use of the Certification Mark; (iv) on or in connection with any products or services other than the certified devices and promotional materials pertaining to the certified devices; or (v) in any manner other than as a certification mark.
 - f. **Inspection.** Licensee will, upon NCWM’s request and at no cost to NCWM, provide NCWM with samples of all uses of the Certification Mark by Licensee.
 - g. **Withdrawn Certification.** If at any time the NTEP Certificate of Conformance is withdrawn from a device, Licensee will immediately cease all use of the Certification

- Mark. Licensee also will notify all distributors and customers who may have or promote formerly certified devices that the NTEP Certificate of Conformance has been withdrawn and the use of the Certification Mark must cease immediately.
- h. **Noncompliance.** Licensee shall immediately and at its sole costs and expense correct any usage of the Certification Mark that NCWM regards as failing to comply with the requirements of this Agreement or Publication 14.
 - i. **Third-Party Infringement.** Licensee will promptly notify NCWM if it becomes aware of any infringement of the Certification Mark by a third party. Licensee shall have neither the right nor the obligation to prosecute any infringement claims against third-party infringers.
 - j. **Use of NCWM.** Nothing in this Agreement gives Licensee the right or license to use the marks “National Conference of Weights and Measures” or “NCWM” apart from the Certification Mark as shown in Exhibit A.
 - k. **Unauthorized Use.** Licensee acknowledges that if it engages in any unauthorized use or reference to the Certification Mark, its right to continue using the Certification Mark may be terminated and that irreparable injury will occur if such unauthorized use continues.
4. **License fees and royalties.** This license is granted fully paid and without royalty.
5. **NCWM ownership of Certification Mark.** Licensee acknowledges the National Conference of Weights and Measures exclusive right, title and interest in and to the Certification Mark and acknowledges that nothing in this Agreement shall be construed to provide to Licensee any rights in the Certification Mark except as expressly provided in the Agreement. Licensee acknowledges that its use of the Certification Mark will not create in it any right, title or interest in the Certification Mark other than the limited license rights granted to Licensee in this Agreement and that all such use of the Certification Mark and the goodwill generated thereby will inure to the benefit of the NCWM. Licensee warrants and represents that: (a) it will not at any time challenge the NCWM’s right, title or interest in the Certification Mark or the validity of the Certification Mark or any registration of the Certification Mark; (b) it will not do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of the NCWM in the Certification Mark; (c) it will not represent that it has any ownership in or rights with respect to the Certification Mark; and (d) it will not, either during or subsequent to the term of this Agreement, adopt, use or register any certification mark, trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of the Certification Mark or any of the NCWM’s other marks.
6. **Representations of Licensee.** Licensee represents and warrants that:
- a. It is duly organized and in good standing under the laws of its jurisdiction of organization;
 - b. Licensee has taken all actions that are necessary or advisable in order for it to enter into this Agreement;
 - c. The person executing this Agreement on behalf of Licensee is authorized to do so;
 - d. The Agreement, upon its execution by Licensee (and assuming due execution by NCWM) shall be the binding obligation of Licensee, enforceable in accordance with its terms;
 - e. Licensee will comply with all changes to Publication 14 within one (1) month from the date such changes are made;

- f. Licensee will not challenge NCWM's rights under its National Type Evaluation Program, Publication 14, or this Agreement and will not challenge the validity of any NCWM mark.
7. **No warranty by the NCWM.** The NCWM provides the license granted in this Agreement without warranty of any kind. TO THE MAXIMUM EXENT PERMITTED BY LAW, THE NCWM DISCLAIMS ALL EXPRESS , IMPLIED AND STATUTORY WARRANTIES.
8. **Limitation of Liability.** IN NO EVENT SHALL NCWM BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE NCWM HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.
9. **Indemnity.** Licensee agrees to defend, indemnify and hold NCWM and its respective representatives, employees, officers, directors and agents harmless against all claims, suits, cost, damages, judgments, attorney's fees, settlements or expenses incurred, caused by, arising from or relating to any breach of this Agreement by Licensee or claimed, obtained or sustained by any third party, whether for personal injury, misrepresentation, or otherwise arising out of or relating to the manufacture, advertising, promotion, use, marketing or sale of the certified devices, provided such claims are not caused by NCWM's negligence or breach of this Agreement.
10. **Effective date, term and termination.**
 - a. **Effective date.** This Agreement shall commence and the license granted under the Agreement shall become effective (the "Effective Date") upon the execution of this agreement by both parties.
 - b. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated by a party as provided in this Agreement.
 - c. **Termination.**
 - i. **Termination by Licensee.** Licensee may terminate this Agreement at any time by providing written notice to NCWM and by discontinuing all use of the Certification Mark. Termination in this manner shall be effective upon receipt of the written notice by NCWM or at such time (not to exceed thirty days after the date notice is received) specified in the notice from Licensee.
 - ii. **Termination by NCWM.** NCWM may terminate this Agreement upon thirty (30) days notice if Licensee breaches any provision of this Agreement and fails to cure such breach within such thirty (30)-day period. NCWM also may terminate this Agreement upon thirty (30)-days notice if it discontinues use of the Certification Mark or modifies the design of the Certification Mark.
 - iii. **Consequences of termination.** Upon termination of this Agreement, the license granted shall immediately terminate. Licensee will immediately discontinue all use of the Certification Mark and shall destroy all materials in their possession containing the Certification Mark and shall certify to the destruction of such materials if the NCWM requests that they do so.
11. **Compliance with laws.** Licensee will at all times comply with all laws, regulations, ordinances, rules and orders that are applicable to it in connection with its manufacture and sale of NTEP certified devices and the operation of its business generally.

12. Miscellaneous.

- a. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Maryland as applied to agreements entered into and fully performed therein by residents thereof. Both parties submit to jurisdiction in Maryland and further agree that any cause of action arising under this Agreement shall be brought in a court in the County of Montgomery, Maryland.
- b. **Severability; Headings.** If any provision within this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- c. **Independent contractors.** The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.
- d. **Notice.** NCWM may give notice to Licensee by personal delivery, mail, courier, facsimile or email to Licensee's address as identified in this Agreement. Licensee may give notice to NCWM by personal delivery, mail, courier, or facsimile to NCWM's physical address as identified at www.ncwm.net or electronically by email to ncwm@mgmtsol.com. Notice shall be deemed given: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. Notices by email shall be deemed given by the end of the business day on which they are sent.
- e. **Entire agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be changed only by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- f. **Assignment.** Licensee may not transfer its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of NCWM and any attempt to do so is void.
- g. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

For LICENSEE:

For NCWM:

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

Exhibit A

Certification Mark



Appendix B

NTETC Draft Grain Analyzer Sector Meeting Summary

This report can be viewed on the National Conference of Weights and Measures website at:
<http://www.ncwm.net/ntep/index.cfm?fuseaction=news>

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Appendix C

NTETC Draft Measuring Sector Meeting Summary

This report can be viewed on the National Conference of Weights and Measures website at:
<http://www.ncwm.net/ntep/index.cfm?fuseaction=news>

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Appendix D

NTETC Draft Weighing Sector Meeting Summary

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<http://www.ncwm.net/ntep/index.cfm?fuseaction=news>

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